

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
MUN CHA OM)	CASE NO. 03-72513-MHM
)	
Debtor)	
)	

)	
OLUMBA K. OGUM)	
)	
Plaintiff)	
)	
v.)	ADVERSARY PROCEEDING
)	NO. 05-9010
MUM CHA OM, SULKO, INC.)	
d/b/a CENTRAL INN MOTEL)	
)	
Defendant)	

ORDER OF DISMISSAL

A status conference was held April 28, 2005. Plaintiff is proceeding *pro se* and the primary purpose of the status conference was to obtain a clear statement from Plaintiff as to the nature of his allegations and to assure that Plaintiff is aware as much as possible of the deadlines applicable to this adversary proceeding.

In the title of Plaintiff's complaint, Plaintiff appears to be relying upon 15 U.S.C. §1601 *et seq.*, which is commonly known as the Truth-in-Lending Act; 11 U.S.C. §544, which is the provision in the Bankruptcy Code permitting the trustee to avoid certain transfers; and 18 U.S.C. §§152 and 3571, both criminal statutes in the U.S. Code. In the body of the complaint, Plaintiff set forth no facts to state a claim under the Truth-in-Lending Act. Plaintiff lacks

standing to sue under §544 of the Bankruptcy Code because he is not a trustee in this case.

Plaintiff lacks standing to sue under the criminal statutes because he is not authorized to proceed on behalf of the United States.¹

Based upon the factual allegations in Plaintiff's complaint, including and incorporating Plaintiff's responses to the court's inquiries at the hearing held April 28, 2005, if Debtor's main bankruptcy case were a Chapter 7 case, Plaintiff would have stated a claim objecting to discharge under 11 U.S.C. §727, but as Debtor's main bankruptcy case is a Chapter 13 case, the more appropriate form for Plaintiff's objections would be as objections to confirmation of Debtor's Chapter 13 plan. Plaintiff has, in fact, asserted these allegations as objections to Debtor's Chapter 13 plan, evidentiary hearings have been held, and Plaintiff's objections are currently pending, following the filing of written briefs.

Plaintiff also makes vague allegations of conspiracy among Debtor's attorney, the Chapter 13 Trustee, and the undersigned.² A thorough review of the record in Debtor's main bankruptcy case shows that Plaintiff's unsupported conspiracy allegations apparently arise from his lack of familiarity with bankruptcy law and procedure. The undersigned has, on several

¹ Criminal statutes define crimes and punishments for crimes. Crimes are offenses against a state or the United States. Crimes defined in the United States Code may be prosecuted only by agents designated and empowered by the executive branch of the federal government to prosecute persons for violations of a federal criminal statute. An individual citizen is not empowered to sue another individual citizen for violation of a criminal statute.

² At the hearing held April 28, 2005, the undersigned suggested that she might recuse and request reassignment of this adversary proceeding. Upon further research, however, it appears that frivolous allegations are insufficient grounds for recusal on the basis of an appearance of bias, because the well-informed observer would perceive no factual basis for Plaintiff's allegations except previously ruling adverse to Plaintiff based on the matters presented. *See In re Taylor*, 417 F. 3d 649 (7th Cir. 2005); *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt*, 794 F.2d 950 (5th Cir. 1986); *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981); *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322 (8th Cir. 1985); *U.S. v. Bond*, 847 F.2d 1233 (7th Cir. 1988); *King v. U.S.*, 576 F.2d 432 (2d Cir.), *cert. denied*, 439 U.S. 850 (1978).

occasions, encouraged Plaintiff to employ an attorney experienced in bankruptcy law, but Plaintiff has been unwilling or unable to do so. Bankruptcy law and procedure are very complex and specialized areas of the law. As such, the average layman is not readily able to assimilate the many and often esoteric vagaries of bankruptcy law. Thus, a thorough review of the record in Debtor's main bankruptcy case and Plaintiff's complaint and an inquiry of Plaintiff on the record in the courtroom regarding the allegations in the complaint compel the conclusion that Plaintiff's complaint fails to state a claim upon which relief can be granted. Accordingly, it is hereby

ORDERED that this adversary proceeding is dismissed for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED, this the _____ day of February, 2006.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE